EDITOR'S NOTE

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Supreme Court, U.S.
FILED
952049 JUN 18 1996
OFFICE OF THE CLERK

(6)

No.__

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM,1995

Tasker Generes, Petitioner

v.

Patricia Morrell and Edward L. Morrell, Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

APPENDIX "D" TO PETITION FOR WRIT OF CERTIORARI

I. Bankruptcy Order Confirming Generes' Plan and Plan
II. Morrells attorney's time records for Adversary.
III. Generes' attorney's time records for Adversary.
IV. Petition for Rehearing.

Tasker O de Generes
Counsel of Record
1845 Happ Road,
Northbrook, IL 60062-5643
(847) 564-8944
June 19, 1996

34 pp

I. CONFIRMATION ORDER WITH REORGANIZATION PLAN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
TASKER GENERES and	)	
DOROTHY GENERES,	)	91 B-17220
Joint Debtors.	)	Chapter 11
	)	Judge Coar

ORDER CONFIRMING PLAN OF REORGANIZATION

This cause coming to be heard for hearing on confirmation of the Debtors' Plan of Reorganization: The debtors having filed their third amended plan of reorganization under Chapter 11 of the bankruptcy code on October 15,1992, a copy of which was transmitted to creditors and all equity security holders on October 26, 1992;

The Court finding that except for the Federal Deposit Insurance Corporation ("'FDIC") all classes of creditors and equity security holders entitled to vote on the plan have previously filed acceptances of the third amended plan of reorganization: The debtors having filed fourth amended plan of reorganization on June 25,1993 and a fifth amended plan of reorganization on June 29, 1993, copies of which have been transmitted to creditors and equity security holders; The FDIC, pursuant to the oral representations of counsel made in open court, having consent to and accepted the provisions of the filth amended plan of reorganization:

The Court determining the provisions of the fourth amended plan of reorganization and the fifth amended plan of reorganization improves the treatment of Deerfield Federal Savings and Loan, The Federation of Financial Institutions (successor in interest to Labe Federal) and Merrill Lynch Equity Management Inc., all of whom had previously voted to accept the provisions the third amended plan of reorganization; The FDIC having withdrawn its previously filed objection to the third amended plan of reorganization; It having been determined after hearing on notice

that the requirements of confirmation set forth in 11 U.S.C. Section 1129(a) have been satisfied:

It is hereby ordered: The fifth amended plan of reorganization filed by the debtors on June 29,1993 is hereby confirmed. A copy of the confirmed plan is attached to this order.

ENTERED
June 30, 1993
DAVID COAR
Bankruptcy Judge

Abraham Brustein ARDC# 06201953
Christopher R. Smith ARDC# 00327662
Xerox Centre1 Suite 1800
SMITH WILLIAMS & LODGE CHARTERED
55 West Monroe Street Chicago, Illinois 60603

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IN RE:	)	
TASKER GENERES &	)	91 B 17220
DOROTHY GENERES	)	Chapter 11
Joint Debtors.	)	Judge Coar
	)	

DEBTORS' FIFTH AMENDED PLAN OF REORGANIZATION

June 29, 1993

Tasker Generes and Dorothy Generes, the Debtors and Debtors in Possession in the above captioned Chapter 11 case, propose the following plan of reorganization, the Debtors' Fifth Amended Plan of Reorganization, pursuant to Section 1121 (a) of the Bankruptcy Code.

The Debtors' Fifth Amended Plan of Reorganization is identical to the Debtor's Fourth Amended Plan of Reorganization except that additions have been made to Article IV, treatment of claims not impaired under the Plan. Article IV still provides for

payment in full at or before the effective date of the Plan out of the proceeds of the Citibank loan, but also provides for an alternative manner of payment in the unlikely event that the Citibank transaction is not completed. The alternative manner of payment is entirely consistent with the Debtor's Third Amended Plan of Reorganization, except with respect to the Federal Deposit insurance Corporation "FDIC"). In the event the Citibank Loan Transaction is not completed, the FDIC will be paid in accordance with an agreement it reached with the Debtors in Possession as described in section 4.05 herein the Fifth Amended Plan and the Debtors' motion for authority to obtain credit.

INTRODUCTION

On August 14,1991. Tasker Generes and Dorothy Generes filed their voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the filing of their petition, they have remained in possession of their assets and have operated their affairs as debtor in possession in accordance with Sections 1107 and 1108 of the Bankruptcy code. This plan of reorganization is submitted for the purpose of paying all claims that existed as of the date of the filing of the bankruptcy case, and post-petition administrative claims.

ARTICLE I
Definitions

The definitions and rules of construction set forth in Sections 101 and 102 of the Bankruptcy Code shall apply when terms defined or construed in those sections are used in this plan. Those definitions and rules of construction shall be supplemented by the following definitions: [omitted as immaterial]

ARTICLE II
Classification of Claims

Claims shall be classified and divided into the following classes:

2.01 Administrative Claims - Class I Claims: Class I claims shall consist of all allowed claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including (1) all administrative expenses incurred during the debtor's chapter 11 case and (2) all professional fees and expenses incurred in connection with the chapter 11 case.

2.02 Claims of Governmental Units - Class II Claims: Class II claims shall consist of all allowed unsecured claims of a governmental unit, agency or body, entitled to priority under Section 507(a) (7) of the Bankruptcy Code.

2.03 Other Priority Unsecured Claims - Class III claims: Class III claims shall consist of all allowed unsecured claims entitled to priority under Section 507(a) of the Bankruptcy Code other than administrative claims and claims held by governmental units. This class includes allowed unsecured claims entitled to priority under Sections 507(a)(3), 507(a)(4), 507(a)(5) and 507(a)(6) of the Bankruptcy Code.

2.04 Unsecured Claims Without Priority - Class IV Claims: Class IV claims shall consist of all unsecured claims without priority.

2.05 Labe Claim - Class V Claim: Class V shall consist of the allowed secured claim of Labe, as evidenced by its promissory note, mortgage and assignment of rents, dated August 13, 1971.

2.06 Deerfield Claim - Class VI Claim: Class VI shall consist of the allowed secured claim of Deerfield, as evidenced by its promissory note and mortgage, dated May 5, 1979.

2.07 Merrill Lynch Claim - Class VII Claim: Class VII shall consist of the allowed secured claim of Merrill Lynch, as evidenced by its promissory note and mortgage dated October 11, 1988.

2.08 Class VIII Claim: The Class VIII claim shall consist of the allowed claim of the FDIC in the amount of $234,498.56 as of May 1,1993, plus interest as provided in Section 4.05 of this Plan.

ARTICLE III

Treatment of Administrative Claims, Claims of Governmental Units, and other Priority Claims

The treatment afforded to holders of Class I and Class II and Class III claims is set forth below:

3.01 Treatment of Class I Claims: Class I claims, other than the claims of professional persons employed under Section 327 of the Bankruptcy Code, shall be paid in cash on the effective date of the plan. Class I Claims of professional persons employed under Section 327 of the Bankruptcy Code shall be paid upon entry of a final order allowing such claims or as soon thereafter as practicable.

3.02 Treatment of Class II Claims: Class II claims shall be paid In full, in cash, on the effective date of the plan.

3.03 Treatment of Class III Claims: the Class III claims shall be paid, in full, in cash, on the effective date of the plan.

ARTICLE IV

Treatment of Claims Not Impaired Under the Plan

The Class IV, V, VI, VII and VIII claims are not impaired under the Plan.

4.01 Treatment of Class IV Claims: The Class IV which consists of unsecured claims without any priority, shall not be impaired under the Plan. The Class IV Claims will be paid in full, in cash, on the later of the effective date of the Plan or the thirtieth day following the final order allowing the claim.

[Class IV is the Morrell claim. The remainder of Article IV deals with claims already paid and so is omitted.]

ARTICLE V

Treatment of Claims Impaired Under the Plan

5.1 There are no claims that are impaired under the Plan.

ARTICLE VI

Funding and Execution of the Plan

[Loan was obtained from Citibank and all claims except Morrells' paid, so details of this section are omitted]

ARTICLE VII

Confirmation

7.01 Except as otherwise provided in the Plan, upon confirmation of the Plan, the debts of the Debtors shall be discharged as provided for in Section 1141 of the Bankruptcy Code. The terms of the confirmed plan shall be binding upon all holders of claims against the Debtors, whether or not the holder is impaired under the Plan, and whether or not the holder has voted upon or accepted the Plan.

7.02 Except as otherwise provided in the Plan or the confirmation order, all property of the estate, including any and all causes of action, shall be revested in the reorganized Debtors on the effective date of the Plan, subject to any obligations secured by the property, and subject to the provisions of the Plan.

7.03 The Bankruptcy Code contains provisions which permit the Court to confirm a plan of reorganization, even if the plan is not accepted by all impaired classes, so long as at least one impaired class of claims does accept the plan and other legal requirements are met. The provisions for confirming a plan without the acceptance of all impaired classes are found in Section 1129(b) of the Bankruptcy Code. The Debtors believe that their plan meets the minimum legal requirements necessary to comply with Section 1129 (b) if one impaired class votes to accept the plan. Therefore, they may seek confirmation of their plan pursuant to Section 1129 (b) if the plan is not accepted by each class of impaired claims.

ARTICLE VIII-IX

[Executory Contracts and Modification omitted as irrelevant]

ARTICLE X

Retention of Jurisdiction by the Bankruptcy Court

10.01 Subsequent to the entry of the order confirming the plan, the Bankruptcy Court shall continue to maintain jurisdiction over this case for the following purpose:

(a) To determine any disputed claims;

(b) To determine requests for payment of claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including compensation or reimbursement of expenses to parties entitled to make such claims;

(c) To resolve controversies and disputes regarding interpretation and implementation Of the plan:

(d) To determine the extent, priority and validity of any lien or interest asserted by any party against property of the estate;

(e) To determine any and all motions, applications, claims disputes, adversary proceedings, or litigated matters pending on the effective date of the Plan or filed within the time limits set by the Bankruptcy Code or an order of the Bankruptcy Court;

(f) Issuing any order necessary in aid to the implementation of the plan or the order of confirmation;

(g) Hearing and determining matters rising in connection with the filing of reports required under the Bankruptcy Code and the Bankruptcy Rules and the conclusion and termination of this chapter 11 case.

10.02 Provided, however, that the Court may refuse to exercise its retained jurisdiction as to any of the foregoing.

Article XI

Disputed Claims

11.01. Any objection to a claim must be filed within the deadline which will be set by the Bankruptcy Court. Any objection which is timely filed shall be adjudicated or determined in accordance with the procedures set forth in the Bankruptcy Code and Bankruptcy Rules. The Debtors have filed an objection to the claim of Edward and Patricia Morrell.

ARTICLE XII
Miscellaneous Provisions

12.1 No disbursing Agent: The Debtors shall act as their own disbursing agent and shall be responsible for making all of the payments required under the Plan.

by:_____
Christopher R. Smith,
one of the attorneys for
Tasker Generes and Dorothy Generes

ARDC# 00327662
Xerox Centre Suite 1800
SMITH WILLIAMS & LODGE CHARTERED
55 West Monroe Street Chicago, Illinois 60603

II.

Generes's Attorney's Time Records from Bankruptcy Fee From First and Final Application of Smith Williams & Lodge, chartered for Allowance of Compensation for Profesional Services Rendered as Attorneys for the Debtors filed August 12, 1993.

EXHIBIT G

MORRELL CLAIM AND ADVERSARY

Date/ attorney	Subject	Hours
08/13/92 AB	Conference with client regarding Morrell Suit	0.5
08/28/92 AB	Edit Morrell claim objection: telephone conference with Tasker Generes regarding same	0.5
08//29/92 AB	Complaint drafting of Morrell claim objection and counterclaim for damges	1
09/10/92 AB	Edit Morrell complaint	0.4
10/20/92 AB	Telephone Conference with client re: Morrell adversary	0.2
11/03/92 CRS	Court Appearance on status on Morrell adversary	0.7
11/04/92 CRS	Draft Correspondence to clients regarding Morrell adversary status	0.3
12/15/92 AB	Telephone conference with Mark King regarding Morrell adversary	0.3
12/29/92 CRS	Telephone conferecne with Generes and King regarding discovery. Draft correspondence to King regarding discovery agreement	1
12/31/92 CRS	Draft correspondence to Mark King regarding discovery schedule agreement.	0.75

01/06/93 CRS	Draft coreespondence to King regarding settlement offer.	1.0
CRS	Telephone conference with King regarding settlement proposal	.2
JA	Legal Research-regarding holdover tenancy	2.25
01/11/93 AB	Preparation for and deposition of Patricia and Edward Morrell	3
01/12/93 AB	Conference with J.A. regarding legal issues regarding Morrell complaint	0.3
01/14/93 JA	Legal Research-regarding holdover provisions in lease and holdover when there is no lease provision; preparation of memo to AB	3
01/16/93 AB	Preparation deposition subpoena and notice regarding Farmers Insurance; letter to King regarding Farmers Insurance.	1
01/19/93 AB	Edit discovery re: Farmers Insurance Group	0.8
01/20/93 TJC	arranged for service of process on Farmer's Insurance	0.2
01/21/93 RLS	Conference with A. Brustein re: attending T. Generes' deposition	0.2
01/25/93 AB	Telephone conference with attorney for Farmers Insurance	0.2
RLS	Review File in preparation of Tasker's deposition. Telephone conference with M. King	.5
	Conference with Tasker re: his deposition testimony.	.5'
	Attendence at deposition of Tasker	5.5
01/28/93 AB	Mark King regarding status of discovery and possible settlement	0.2

02/06/93 RLS	Draft correspondence regarding possible settling Morrell case	0.25
02/11/93 RLS RLS	Telephone conference with Generes regarding settlement Draft correspondence to court reporters regarding obtaining Tasker's deposition	0.2 .3
02/24/93 RLS	Draft correspondenct to Tasker re: reviewing his deposition transcript	0.3
03/06/93 RLS	Review of Morrell's proposed joint motion to continue scheduling of adversary matter.	0.2
03/12/93 CRS	Court Appearance on motion to amend pretrial schedule	1
03/22/93 RLS	Telephone conference with M.King re Judge Coars's order re: pre-trial schedule	0.2
6/16/93 RLS RLS	Prepartion of trial witness list and exhibits. Review and revise pre-trial list. Telephone conference with M.King regarding our settlement offer.	1 .5
06/18/93 RLS	Telephone conference with M.King regarding exhanging witness list.	0.5
06/21/93 RLS	Preparation of proposed findings of facts and conclusions of law	1.5
06/22/93 RLS	Review and revise proposed findings of fact and conclusion of law Preparation of stipulation as to certain facts and documents Review and revise defendants exhibits	1.5 .25
06/23/93 RLS	Review of defendant's proposed findings of fact and law Preparation of finding and conclusion of law, and cover letter to Judge Coar. Telephone conference with Tasker	2.75

6/24/93 RLS	Telephone conference with McCorkle Court Reporters ordered Morrell's deps and reviewed Tasker's deposition	2
TJC	Conference with RLS regarding proper service of option. Legal Research -regarding same	1.5
06/28/93 RLS	Review File in preparation for trial	3
06/29/93 RLS	Preparation of direct examination of Tasker. Reviewed dep. transcripts of TG and the Morrells as well as all pleadings. Telephone conference with Tasker regarding strategy. Conference with AB regarding strategy	4.5
06/30/93 RLS	Review of file and final preparation before trial and Trial of Adversary matter before Judge Coar	7
07/19/93 AB	Draft correspondence to client re: timing for filing post trial motion or notice of appeal	0.6
07/23/93 AB	Telephone conference with client re filing of post trial motion	0.2

Attorney	Hours	Rate	FEE
AB Abraham Brustein	9.5	$175.00	1,662.5
CRS Christopher Smith	6.15	$125.00	768.75
RLS Ron Sandack	31.15	$125.00	3,893.75
TJC Tom Cunnigham	1.7	$75.00	127.5

JA John Ayanian	5.25	$75.00	393.75
Total:	**53.75**		**$6,846.25**

Mr. Sandack was principally responsible for conducting the Morrell litigation. He completed discovery, prepared pre-trial materials and presented the case at trial. He is a 1989 graduate of DePaul University College of Law and was admitted to practice in October 1989. He has been associated with Smith Williams and Lodge since December 1990.

III.

Morrells' Attorney's Affidavit, Mark E. King, on Morrell Lease Dispute with Generes: Fee Petition to Bankruptcy Judge:

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Date	Subject	Hours
01/06/93	Phone call with client re: upcoming depsitions. Phone call with plaintiff's attorney Chris Smith re: same and document production in the case.	0.3
01/08/93	Phone call with Chris Smith re: depositions. Prepartion for same. Review of documents for same and phone call with client re: same	1:06
01/11/93	Preparation of clients for deposition and defended their depositions. Letter to clinets re: missing documents and information still needed. Letter to plaintiff's attorney Abe Brustein re: documents produced. Conference with David B. Kahn ("DBK") re: foregoing	5:00
01/20/93	Review of subpoena and letter from Generes' attorney.	0:12
01/22/93	Phone call with client re: additional information requested by plaintiff. letter to Geners' counsel re: same. Prepartion for Generes' deposition	1:06
01/25/96	Preparation for Generes' deposition. Conference with client re: same	6:48
01/28/93	Letter to Brustein re: additional discovery. Phone call with Brustein re: possible settlemtn.	1:00
02/18/93	Phone call with Brustein re: schedule	0:06
04/05/93	Letter to clients re: scheduling	0:12

05/28/93	Phone call with client re: case and bankruptcy notice that she received.	0:12
06/11/93	Phone call with plaintiff's attorney Sandack re: case and trial.	0:18
06/15/93	Prepared exhibits, exhibit list, and witness list for trial	2:36
06/16/93	Preparation of trial exhibits. Phone call with client and Sandack re: possible settlemtn.	5:00
06/17/93	Review of defendants' exhibits, exhibit list and witness list. Phone call with Sandack re: same. Phone with client re: same. Legal research on notice of lease extension Generes' alleges he delivered and forms of adequate delivery. Conference with DBK re: trial presentation and settlement possibilities.	1:30
6/21/93	Preparation of proposed findings of fact and conclusions of law. legal research same	3:36
6/22/93	Conference with DBK re: proposed findings of fact and conclusions of law and trial presentation. Review and revision of same. Legal research on same. Phone call with Sandack re: fact stipulation. Review of draft fact stipulation. Filed proposed findings of fact and conclusions of law. Review of Generes' deposition in preparation for trial	5:54
6/23/93	Review of Generees' deposition. Phone call Sandack with re: fact stipulation. Review and revision of same.	2:12

6/24/93	Phone call with defendants' witnesses and Sandack re: case and trial preparation. Review of revised stipulation.	1:54
6/25/93	File fact stipulation	0:48
06/29/93	Preparation for trial. Phone call with potential witnesses. Phone call with clients re: case and proofs.	10:00
06/30/93	Preparation for adversary hearing. Revision of open and closing statements. Preparation of witnesses. Bankrutpcy Court appearance for adversary hearing before Judge Coar.	8:30
07/01/93	Phone call with Judge Coar's clerk re: final order	0:12
07/06/93	Preparation of order. letter to Sandack re: same. Organized file	0:54
07/07/93	Phone call with Sandack re: final order and case. Review and rrevision of final order. Filed same. letter to Coar enclosing same for his review.	1:30
07/08/93	Phone call with client re: case issues	0:18
07/22/93	Phone call with client re: the signing of their depositions and phone call with clerk re: the entry of judgement.	0:12
08/04/93	Review of Generes' motion for new trial. Phone call with client re:same. Phone call with Sndack re: same. legal research on motion for new trial and motion to amend jugment.	1:42
08/05/93	Letter to Generes re: his motio. Legal research re: same	1:00

08/06/93	Legal research on the cases cited by Generes as basis for new trial and legal research issue of deprivation of closing arguments	1:36
08/10/93	Review of minute order dismissing the Generes' motion for new trial	0:06
08/12/93	Review of Generes motion for a new trial	0:12
08/16/93	Preparation for Court hearing and Bankruptcy Court appearance for hearing on the Generes' motion for a new trial	2:00
08/20/93	Review of Generes' notice of appeal and motion for stay pending appeal. Phone call with client. Legal research same.	3:00
08/23/93	Preparation for court hearing re: stay. Conference with Generes' after court hearing on motion for stay. Phone call with client re: same	1:06
08/01/94	Review of order setting status hearing in Bankruptcy Court	0:18
12/19/95	Phone call to Friedman of U.S. Trustee's office re: Bankruptcy Court status hearing.	0:12
01/08/96	Phone call with Friedman of U.S Trustee's office re: next Bankruptyc Court status hearing and the status of the attorney fee petition in the 7th Circuit	0:18
02/07/96	Review of Generes' Petion for Certiorari to the U.S. Supreme court on the Adversary Hearing issues. Legal reserach on rules applicable to same. Conference with DBK re: same	1:06

02/12/96	Letter to Ed and Patty re: Generes Certiorari petition	0:06
02/20/96	Phone call with Friedman of the U.S. Trustee's office re: Bankruptcy Court status hearing tomorrow.	0:18
02/21/96	Bankruptcy Court appearance for status hearing on Generes' case	2:42
03/07/96	Review of Generes' petition for rehearing and suggestion of rehearing en banc in the Seventh Circuit. Conference with DBK re: same	0:42
03/11/96	Preparation of Bankruptcy Court petition for fees and related papers	4:24
03/12/96	Preparation of Bankruptcy court petition for fees and related papers. Arranged for filing and service of the papers	2:12
03/13/96	Revised Bankruptcy Court petition for fees and related papers. Arranged for filing and service of same	5:00
estimate 3/13/96 through 5/15/96	Including prepartion of reply papers on Bankruptcy Court fee mtion and court appearance for decision on same	5:00
Subtotal for Mark E. King	**101:48 hours at $150 per hour**	**$15,222**
01/11/93	Preparation of clients for their deposition. conference with Mark King ("MEK") and clients re: same	0:36
06/17/93	Conference with MEK re: trial and settlement.	1:00
06/22/93	Reviewed plaintiff;s and defendants' findings of facts and conference with MEK re: presentation of case	0:30

06/28/93	Conferences and phone calls with client and with MEK re: trial	0:42
07/23/93	Review of Generes' motion for new trial. Phone call to client re: same	0:36
02/07/96	Conference with MEK re: Generes' Petition for Certiorari to the U.S. Supreme Court.	0:18
03/07/96	Conference with MEK re: Generes' petition for rehearing and suggestion of rehearing en banc in the Seventh Circuit.	0:18
Subtotal for David B. Kahn	4 hours at $250 per hour	$1,000.

Attorney	
Mark King	$15,222
David Kahn	$1,000
Total Fee:	$16,222
Total Fee and expenses:	**$17,100.80**

EXHIBIT A
TO THE
SECOND AFFIDAVIT OP MARK E. KING

THE FIRM RESUME OF

DAVID B. KAHN & ASSOCIATES. LTD.David B. Kahn graduated with honors from Washington University in 1964, ranking first in the School of Economics, and received a J.D. from Harvard Law School in 1967. He is admitted to practice before the Supreme Court of Illinois, the United States Tax Court, the Federal District Court for the Northern District of Illinois, the Federal District Court for the Central District of Illinois, the Seventh

Circuit Court of Appeals, the Ninth Circuit Court of Appeals and the United States Supreme Court.

He has litigated in numerous suits in both the state and federal courts, and has conducted appeals in the Illinois and Federal appellate courts. He was chief counsel to the Sparling Commission of the American Civil Liberties Union which studied the police riots preceding the 1968 Democratic National Convention in Chicago. He is an active member of several bar associations and is a founder of the Chicago Bar Association Committee on Class Litigation. A substantial part of his practice is devoted to participation in major complex litigation. Mark I. King graduated with honors from Northwestern University in 1980 and with high honors from ITT/Chicago-Kent College of Law in 1985, where he was a member of the board of editors of the Law Review, won the ITT/Chicago-Kent College of Law School Moot Court competition, won the 1984 Corpus Juris Secundum Award for significant legal scholarship, and received the 1984 American Jurisprudence Award for scholastic achievement. He was also the winner of the ABA section of Urban, State and Local government law award for scholastic achievement in the area of Land Use Law and the author of "Federal Preemption of the State Regulation of Nuclear Power: State Law Strikes Back Silkwood V. Kerr-McGee Corporation." ITT/ Chicago -Kent Law Review (1984).

. He is admitted to practice before the Supreme Court of Illinois, the Federal District Court for the Northern District of Illinois, the Federal District Court for the Central District of Illinois: the Seventh Circuit Court of Appeals and the Ninth Circuit Court of Appeals. He has served as counsel in numerous actions in both the state and federal courts and has conducted appeals in the Illinois and Federal appellate courts. A substantial part of his practice is devoted to participation in major complex litigation.

Representative Cases: The attorneys of David B. Kahn & Associates, Ltd. have had considerable experience in complex litigation, including litigation under federal securities and antitrust laws, shareholder derivative statutes, state and federal constitutional provisions and other types of litigation. Examples of cases in which we have served as lead or co-lead counsel include: Haven Pharmacy. et al. v. Abbott Laboratories. et al. (No. 95-C-0663.

N.D.Ill.) (prescription drug antitrust action); In re PS Group Securities Litigation (93-2046, C.D. Ill.) (securities fraud); Kopelman v. The Managers Funds, et al. (394 Cv 01875, D.Conn.) (securities fraud and Investment Company Act violations); Progressive United Corpration v. Belzbera,(BC 051367, Cal.Sup.Ct.) (fraudulent transfer); Prettyman v. Commonwealth Edison (No. 93 CH 8838, Ill.) (class action challenge to employment policies); Mendel v. Carroll et pl. (CA No. 13306, Del.) (derivative and shareholder action against corporate board for breach of fiduciary duty); D'Abla et al. v. Whitley, et al. (91 CH 11858, Ill.) and Grail, et al. v. Bugher (92 Cv 923, Wisc.) (equal protection challenges to the imposition of Illinois and Wisconsin sales tax on automobile rebates); Fry v. UAL Corp. (90 C 0999, N.D.Ill.) (securities fraud); ITSI T.V. Productions, Inc. v. CARF, et al. (CIV-S-89-1686 LKK, E.D.Cal.) and ITSI T.V. Productions, Inc. v. Bally's Grand Inc., et al. (Cv-N-90-314-HDM, D.of Nev.) (copyright infringement actions against numerous defendants in California and Nevada); Rubin v. Sears (76 CH 1366, Ill.) (nationwide class action challenging defendants' administration of employee life health insurance program); Firestone v. Sears (79 CH 8290, Ill.) (nationwide class action challenging defendants' administration of employee health insurance program); and Pollion v. Powell, 47 F.R.D. 331 (N.D.Ill.). We have also acted as co-counsel in many other cases including Wilensky, et al. v. Digital Equipment Corp. et al. (Cv No. 94-10752-JLT, D.Mass) (securities fraud) and In re T^2 Medical Inc. Shareholders Litigation (1:94-Cv-744-RLV, N.D.Ga) (securities fraud).

IV Petition for Rehearing in the Seventh Circuit

TASKER GENERES' PETITION POR REHEARING AND SUGGESTION FOR REHEARING IN BANC

The plaintiff-appellant, Tasker Generes, pro se, petitions for rehearing from the Court's final order of February 21, 1996 and suggests rehearing in banc. Ms. Dowd, my former attorney, concluded her representation by letter sent on February 26, 1996. After analysis, it is my belief that the panel decision is contrary to decisions of the Supreme Court of the United States and of other circuits, and that consideration by the full court is necessary to secure and maintain uniformity of decisions.

This Court has concluded that Tasker Generes's appeal was frivolous and imposed on him alone $19, 205.18 in sanctions. (Order, February 21, 1996). As shown below, this decision is contrary to the rule announced in McKnight v. General Motors Corp., 114 S. Ct. 1826, 1826 (1994) (rev'g this Court's imposition of Rule 38 sanctions for a frivolous appeal where the question in the appeal had not been decided by the Supreme Court)

This Court has reversed the determination by the Bankruptcy Court that each side should bear their own costs. Bankruptcy Judge Coar determined that his decision was purely based on his credibility finding against Generes. In re Generes, 69 F.3d 821, 824 (1995). In addition, this Court found the Judge Coar abused his discretion by not awarding attorney's fees and costs inasmuch as Generes had perjured himself and made unsubstantiated accusation during the bankruptcy proceedings. This Court also held that Judge Marovich, in the District Court, abused his discretion in this case. He had held, at 1022-23, that Generes' appeal to the District Court was frivolous under the frivolous clause of Fed. R. Civ. P. 11. He expressly refused to award, however, any monetary sanctions on Morrells' application for fees. He restricted himself to criticism in his published opinion. In re Generes, 165 B.R. 1011 (N.D. Ill. 1994). This Court found that an abuse of discretion.

In summary, this Court has created the unjust rule that where the Bankruptcy Court does not believe one's trial testimony, the person giving testimony is a perjurer and person of bad morals, who should be punished. Judge Coar, who observed the parties did not hold that Tasker Generes had committed perjury. On the contrary, the Bankruptcy Court required each party to pay its own costs and did not sua sponte impose any sanctions. See attached Order. Judge Coar made no finding the Tasker Generes acted in bad faith. Also, the Morrells did not make any motion for sanctions to the Bankruptcy Court. The Morrells nevertheless appealed the failure to award costs and attorneys' fee, after Generes appealed.

This Court's rule conflicts with the Fifth Circuit's decision in Rodrigues-Gutierrez v. INS, 59 F.3d 504, 507-508 (5th Cir. 1995): The Fifth Circuit, quoting a decision from the Ninth circuit, held that to assume:

a witness whose testimony is not accepted by the trier of fact is a perjurer and not a person of good moral character ... is not only legally invalid, but is contrary to the basic sense of fairness upon which our legal system is founded. (citation omitted). The BIA incorrectly concluded that Rodriguez was not a person of good moral character, because it erroneously held that a finding that testimony lacks credibility is the equivalent to a finding that the witnesses has given false testimony.

Thus, the Seventh Circuit rule implements a regime which is contrary to the basic sense of fairness upon which our legal system is founded. You are encouraged to read the Bankruptcy trial transcript, a separately bound exhibit to this Petition. Afterwards, ask yourself do you agree with Judge Coar that each party should bear their own costs. Ask has Judge Coar abused his discretion? Or, has this Court abused its discretion? An abuse of discretion occurs where a ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990) (rev'd on other grounds by order amending rules, 146 F.R.D. 404 (Apr. 22, 1993)).

Regardless whether the sanction in this case against Tasker Generes is called a criminal fine or a civil sanction, it is subject to constitutional constraints. This Circuit may not impose fines without first establishing guilt by proof beyond a reasonable doubt. Department of Revenue of Montana v. Kurth Ranch, 114 S.Ct. 1937, 1945 (1994). The rule in this Circuit contravenes this standard.

The holding of this Court that Tasker Generes is a perjurer is at the root of the sanctions imposed against him under Rule 38. On top is this Court's finding that Tasker Generes brought a frivolous appeal from Bankruptcy Court to this Court. The fact that no monetary sanctions were imposed on Tasker Generes's attorney Lynn Dowd shows that this Court accepts the arguments she made that she did not bring a frivolous appeal and undercuts the Court's finding of frivolousness. See Responses to Rule 38 Notice.

This Court held that the appeal was frivolous because it was an appeal of sanctions and because it reargued facts and credibility issues previously ruled upon. In addition to the fundamental error in the sanction issue, the Court's holding on the frivolity of an appeal based on credibility finding is also erroneous. Although this Court characterized the issue of whether closing argument is permitted as a separate procedural question, it can not be justly disassociated. Whether there has been a fair trial with due process of law is the fundamental question. No standard of review matters or can be applied, when there has not been a fair trial, because standard of review is derivative and subsidiary. It does not even come into operation until there has been a fair trial.

Tasker Generes argues the credibility findings of the Bankruptcy Court are immaterial on appeal because denial of closing argument requires a new trial. Factual findings made without the benefit of closing argument by Tasker Generes's attorney, Ronald Sandack of SMITH WILLIAMS and LODGE, Chartered, who could explain and put the facts in proper perspective to the Court renders the Court's finding outside of the logic granting deference. After all, Fed. R. Bankr. P. 8013, requires that due regard shall be given to

the opportunity of the bankruptcy court to judge the credibility of the witnesses. (emphasis added). When closing argument is denied by the Bankruptcy Court, the due regard to be given is compromised and negative. An appeal then is not frivolous per se.

The United States Supreme C(irt's decision in FCC v. WJR. The Goodwill Station, 337 U.S. 265, 277 (1949) held that the Fifth Amendment due process rights to closing argument in a civil proceeding must be decided on a case-by-case basis. This Court rejects that Supreme Court rule. Instead it has adopted as a matter of federal procedural law, an appellate court decision from the State of Illinois1 that closing-argument is merely a matter of privilege and not a right. In re Generes, 69 F.3d 821, 825 (1995). Moreover, the U.S. Supreme Court has acknowledged that a hearing, in its very essences1 demands that he who is entitled to it shall have the right to support his allegations by argument however brief. The hearing is the hearing of evidence and argument. Without hearing argument, the Supreme Court said in Morgen v. United States, 298 U.S. 468, 480 (1936):

It is manifest that the hearing has not been given. And, the U.S. Supreme Court said in Hovey v. Elliot, 167 U.S. 409 (1987):

Wherever one is assailed in his person or his property, there he may defend for the liability and the right are inseparable. This is a principle of natural justice recognized as such by common intelligence and the conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard is not a judicial determination of his rights and is not entitled to respect in any other tribunal.

Thus, the failure to allows closing argument, which the U.S Supreme Court has held is integral to a hearing, effects the construction of Fed. R. Bankr. 8013. It requires findings of fact without closing argument to be disregarded. Ms. Dowd properly presented the following cases to this Court.

The Kansas Supreme Court has held that counsel has an absolute right to closing argument. Richas v. Wichita Precision Tool Co., 373 P.2d 201, 204-206 (Kan. 1962):

Our system of jurisprudence is founded on the proposition that every litigant has a right to be heard. The right to be heard carries with it the absolute right to be represented by counsel, and the right of counsel to assist the court by oral argument in analyzing the evidence and applying the law.

The New Jersey Supreme Court has also held that the right of a party to present analysis of evidence and inferences claimed to be deducible therefrom to trier of facts, whether that tribunal be judge or jury, is subject only to reasonable limitation of a sound discretion. Aladdin Oil Burner Corp. v. Morton, 187 A. 350,350 (N.J. 1936) holding:

The state of the case exhibits issues of fact: and, in this situation it was error for the judge, at the close of the case, to deny the right of summation asserted by appellant. This constituted an arbitrary deprivation of an absolute right, inherent in our system of trial procedure, rather than the exercise of a discretionary authority, reviewable only in the event of abuse -the right, of the very essence of the right of hearing answering the requirements of due process, to present an analysis of the evidence and the inferences claimed to be deducible therefrom to the trier of facts, be that tribunal the judge or a jury. It is, of course, subject to reasonable limitation in the exercise of a sound discretion. (citations omitted). But limitation necessarily connotes the existence of this primary right. The informality of procedure permissible in district court proceedings does not comprehend the deprivation of an essential right such as this. That tribunal' findings of fact on conflicting evidence are not reviewable on appeal. The judgment is accordingly reversed, and the record remitted for further proceedings not inconsistent with this opinion; cost to abide the event.

Applying this logic to the case at bar, pursuant to Fed. R. Bankr. P. 8013, the due regard to accorded Bankruptcy Court that denied

closing argument is none. The case must be remanded for a new trial. This case, like the above case, exhibits issues of fact that mandate closing argument not be denied.

The Supreme Court of North Dakota has held that parties in non jury civil cases have a right to present final argument. Fuhrman v. Fuhrman, 354 N.W.2d 97, 101 (Dakota 1977). It examined precedent across the United States in its opinion. At 101, the Court quoted from the United States Supreme Court decision in Herring v. New York, 422 U.S. 853, 863 (1975):

But just as surely, there will be cases where closing argument may correct a premature misjudgment and avoid an otherwise erroneous verdict. And there is no certain way for a trial judge to identify accurately which cases these will be, until the judge has heard the closing summation of counsel. (citation omitted) And, as the same court points out in a footnote, closing argument in a bench trial may be even more important than in a jury trial, since a judge reaches his decision without the stimulation of opposing viewpoints inherent in the collegial decision-making process of a jury. (citation omitted) While the Supreme Court was speaking in the context of a criminal trial to the court, we believe the statements we have quoted are equally applicable to civil cases.

Thus, in the case at bar, it being a bench trial, closing argument, certainly was important. Since, a finding of lack of credibility without closing argument, has resulted on appeal in a perjury fine of $19,205.12. Tasker Generes has been deprived of Sixth Amendment due process even if the proceeding is civil.

Likewise, the U.S. Supreme Court has found the label civil or criminal to be of little consequence when Constitutional rights such as Double Jeopardy, Due Process of Law, and Excessive Fines are concerned. DeDartment of Revenue v. Kurth Ranch. 114 S. Ct. 1937, 1945 (1994). In addition, the Standards for Professional Conduct within the Seventh Federal Judicial Circuit. Court's Duty to Lawyers: Rule 8, requires the court in both civil and criminal cases to allow closing argument.

A conclusion that the appeal was frivolous is unsound. It certainly cannot support Rule 38 sanctions without violating the rule of McKnight v. General Motors Corp., 114 S.Ct. 1826, 1826 (1994) (rev'd sanctions imposed upon an appellant's attorney by this Court for making an argument even though the argument was directly foreclosed by Seventh Circuit authority because it was an issue that the Supreme Court had not yet addressed.)

Also, appellants should not be sanctioned for appeals in which they make good faith arguments for an extension of law on an issue of first impression. See Rogers v. Wood, 910 F.2d 444, 449 (7th Cir. 1990). See also 28 U.S.C. § 1291 (granting litigants the right to appeal adverse judgments); Rules Enabling Act, 28 U.S.C. § 2072(b) ("Such rules shall not abridge, enlarge or modify any substantive right"). However, a penalty against Tasker Generes, on the basis of a credibility finding, denies Sixth amendment right to effective assistance and closing.

In response to the cross-appeal on sanctions, appellant believed it was appropriate and meritorious to address the legal effect of the Bankruptcy Code's requirement that a request for attorney's fees must be raised and preserved in the bankruptcy court proceeding under Fed. R. Bankr. P. 7008(b).

This Court's held that old Fed R. Civ. P. 11 applies instead of the amended rule effective in December of 1993 to the District Court's decision on April 21, 1994 which denied monetary sanctions. In re Generes, 69 F.3d 821, 827 (1995). But the amended rule was applied in a case commenced before the amendment in Elliott V. Tilton, 64 F.3d 213, 215 (5th Cir. 1995)(rev'g sanctions: a) motion for sanctions, decision, and sanctionable conduct occurred after the effective date of the rule. b) sanctions, under inherent authority, rev'd for failure of trial court to make the required finding of bad faith, at 217). Generes' opening brief, Judge Marovich held frivolous under the first prong of rule 11. It was filed on November 15, 1993, and so could have been withdrawn within the safe harbor period under the new rule after December 1, 1993, had Morrells

made a safe harbor demand. Morrells made no demand to withdraw the appellate brief. Nor did Judge Coar make a finding of bad faith against Tasker Generes. Since Judge Coar made no finding of bad faith no sanction under inherent power is permitted. See also, Knipe v. Skinner, 19 F.3d 725 (2nd. Cir. 1994) (concluding that a just and practicable application requires that the district court be afforded an opportunity to exercise its discretion whether to impose sanctions under the amended version because Rule 11 sanctions should be imposed with caution, citing to third circuit cases)

The amendments to Fed. R. Civ. P. 11, by their terms govern: all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings in civil cases then pending. 146 F.R.D. 404 (Apr. 22, 1993) (Supreme Court order amending the Federal Rules of Civil Procedure. Several circuits have interpreted this language, holding that the amendments should be applied to pending cases to the maximum extent possible. Burt v. Ware, 14 F.3d 256, 259 (5th Cir. 1994). But see Cleveland v. Porca Co., 28 F.3d 289 (7th Cir. 1994). Generally a court is to apply the law in effect at the time it renders its decision. Bradley v. Richmond School Bd., 416 U.S. 696, 711 (1974). Indeed, at common law, statutes that merely removed a burden on private rights by repealing a penal provision (whether criminal or civil, were understood to preclude punishment for acts antedating the repeal. See United States v. Chambers, 291 U.S. 217, 223-224 (1934).

This Court also erroneously holds that unless monetary sanctions are awarded, no sanctions have been awarded. In re Generes, 69 F.3d 821, 827 (1995). However, the general rule is published criticism by a court about conduct does constitute sanctions. Unanue-Casal v. Unanue-Casal, 898 F.2d 839, 842 (1st Cir. 1990); Pony Express Courier v. Pony Express Delivery, 872 F.2d 317, 319 (9th Cir. 1989). In re Kelly, 808 F.2d 549 (7th Cir. 1987). Thus, Judge Marovich did not commit abuse, which this Court held he had committed, by declining to grant monetary sanctions to Morrells in addition to his published reproval. This is true regardless of whether the amended or old rule 11 applied.

Moreover, the comments to the new rule do say that no explanation is necessary for a denial of sanctions.

No monetary sanctions were imposed on Tasker Generes' attorney, Lynn D. Dowd. Lynn D. Dowd, explained to this Court in her Rule 38 Response that she did not charge Tasker Generes for this appeal. Ms. Dowd prepared all the briefs, did all the legal research, and assumed the financial responsibility for appeal. This appeal could not have been brought except for her intervention. Attorney Dowd acknowledged, by signing the briefs, her conclusion that the appeal was not frivolous; and, if so, an undertaking to be responsible. This Court has exonerated her.

Tasker Generes was entitled to rely on her legal advice because she is an expert in appellate law. She was Chairman of the Appeals Department at CASSIDAY, SHADE, & GLOOR. When she left that firm for her present firm, she took over this case from them. Ms. Dowd has been a board member of the Appellate Lawyers Association. She has argued many cases before the Seventh Circuit. All in all, she tells me she has done over 200 appeals. A search on Lexis reveals many cases in which she was appellate counsel. Also, she teaches legal writing at a local law school.

In 1996 and 1995, Tasker has provided pro bono legal assistance to Lian Ying Li, an asylum seeker, held in prison by the INS. In 1994, he succeeded in freeing a women unjustly in prison who was fleeing persecution for her opposition to China's coercive family planning practices. The Court entered a small award. Tasker, born in 1942, has not been employed since 1984, aside from legal assistance to persons detained in prison by the INS and one case for Don Williams, a 1986 collection action brought by Ektelon Corp against Williams. Don has paid no fees to Tasker. Also, Tasker gets $200 about four times yearly as a Cook County Mandatory Arbitration panelist. Otherwise, he never received attorney fees. Also, 1829 Happ, which is for sale to reduce in part the debt owed to Citibank, has been vacant since August of 1994. Tasker Generes has never brought an appeal in the Seventh Circuit before this case and there is no reason to expect he ever will in the future. Tasker Generes is

responsible for the care of his dependent mother-in-law who has suffered strokes which leave her unable to feed, dress, walk, or talk for herself. Given the published opinions of this court, it is not reasonable to expect anyone would employ Tasker Generes. On the other hand, Ms. Dowd is employed by LEVIN, MCPARLAND, PHILLIPS, LEYDIG & ~ABERKORN, 180 N. Wacker Drive, Suite 300, Chicago, IL.

The purpose of sanctions is to act as a deterrent to frivolous appeals. Imposition of sanctions on the client only detracts from the purpose. The imposition solely on Tasker Generes is contrary to Rule 38's purpose, when it is in actuality a fine for perjury. Tasker Generes has never before had an appeal to this Seventh Circuit Court. Ms. Dowd has continued to have cases in the Seventh Circuit (recently doing the oral argument. See, Docket 94-1647, 95-1610.) See Sparks v. NLRB, 835 F.2d 705, 707 (7th Cir. 1987) (expert attorney had to pay sanctions - not client).

In any case, the request for fees by Morrells is excessive. Frivolous appeals should be disposed by motion. See, Brooks v. Allison Division, 874 F.2d 489(7th Cir. 1989), where the appellee, rather than filing a motion to dismiss the appeal as frivolous, needlessly burdened this court with a full-fledged brief on the merits, thus failing his duty to mitigate the damages caused by the appeal. See also Espinueva v. Garrett, 895 F.2d 1164, 1167 (7th Cir. 1990). Furthermore on February 26, 1996, before Magistrate Judge Bobrick, Mr. Mark King conceded that Morrells had not paid all his bills. where Mr. King has been attorney throughout for the Morrells1 his bill for effort's, including the filing of a short appellees' brief, does not reflect billing judgment to this Court.

Because whether there was a friviolous appeal of sanctions and credibility issues is the organic substance of this Court's decision, under Osterneck v. Ernst & Whinney, 489 U.S. 169, 174 (1989), this Court's Rule 38 notice will be treated as equivalent to a motion which involves reconsideration of matters properly encompassed in a decision on the merits. Thus, this Court's decision, In re Generes, 69 F.2d 821 (1995) was rendered interlocutory ~)y this Court's

Rule 38 notice in the opinion. The Court's modification to not sanction Ms. Dowd also confirms that effect. Accordingly, this Court's mandate which has been prematurely issued, should be recalled.

In conclusion, this is not an appropriate case for sanctions However, if this court still deems the appeal sanctionable, it is unjust to sanction Tasker Generes, in his circumstances, with money penalty, pro bono INS detainee work instead is suggested.

WHEREFORE, the plaintiff-appellant, Tasker Generes, tenders the foregoing petition for rehearing and respectfully requests that the court impose no sanctions against him, and recall its mandate which was prematurely issued.

Respectfully submitted,

Tasker Generes

AFFIDAVIT OF TASKER GENERES IN SUPPORT OF PETITION FOR REHEARING

Tasker Generes, under oath deposes and states:

1. that, on information and belief, the facts stated above about Ms. Lynn Dowd, are true and correct, and verily he believes them to be true.
2.that the facts about his financial circumstances stated above are true and correct.
3. that the facts about his representation of INS detainees are true and correct.
4. that Mark King before Judge Bobrick on February 26. 1996 conceded Morrells have not paid all his bills for the litigation between Tasker Generes and Morrells.
5. that according to Lotus Word Pro, the document text word count including this affidavit is 3890.
6. Nothing further saith affiant.

_____
Tasker Genenes.

Tasker Generes
I 845 Happ Road
Northbrook, IL 60062-5643

Dated: March 6, 1996